IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21771 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTIBHAI KALYANBHAI - Petitioner(s)

Versus

STATE OF GUJARAT THRO' SECRETARY (APPEALS) & 4 - Respondent(s)

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Appearance :

MR PJ VYAS for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have

challenged the legality and validity of the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dated 4.10.2005 passed in Revision Application No.4 of 2003 in allowing the said revision application and quashing and setting aside the order passed by the Deputy Collector, Choryashi Prant dated 17.4.2003 passed in Fragmentation Case No.6 of 2002.

2. The land bearing Revenue Survey No.332, 335/1/1, 335/1/2 situated at Dumas, Taluka Choryashi, were owned by Kalyanbhai Hirabhai and the same came to be purchased by the private respondents herein by registered sale deed dated 18.4.89 and the names of the private respondents came to be mutated in the revenue record vide Entry No.3043 dated 23.12.1991. The Deputy Collector, Choryashi Prant, Surat initiated the proceedings under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter referred to as the “the Fragmentation Act” for short) being Fragmentation Case No.6 of 2002 as according to him by transaction between the original land owner and the private

respondents herein there is breach of provisions of the Fragmentation Act. The Deputy Collector, Choryashi Prant by its order dated 17.4.2003 passed an order under the provisions of the Fragmentation Act forfeiting the lands to the State Government by holding that there will be a fragment with regard to the land bearing Survey No.335/1/1 and 335/1/2. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Choryashi Prant, Surat dated 17.4.2003 passed in Fragmentation Case No.6 of 2003, the private respondents herein preferred revision application No.4 of 2003 before the Principal Secretary (Appeals), Revenue Department, State of Gujarat. It was contended on behalf of the private respondents before the Secretary (Appeals) that exercise of powers by the Deputy Collector for alleged breach of Fragmentation Act, was after unreasonable period i.e. almost after a period of 13 years and the Deputy Collector, Choryashi Prant would not have exercised the powers after unreasonable period. Accepting the above submission and even considering the fact that the land in question is Bagayat land, there is no fragment and by aforesaid

transaction there is no breach of the Fragmentation Act, the Principal Secretary was by its judgment and order dated 4.10.2005 allowed the said revision application and quashed and set aside the order passed by the Deputy Collector, Choryashi Prant dated 17.4.2003 passed in Fragmentation Case No.6 of 2002. Being aggrieved and dissatisfied with the aforesaid order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, the petitioners – heirs of the original land owner Kalayanbhai Hirabhai have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri P.J.Vyas, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Secretary (Appeals) has materially erred in allowing the said revision application and holding that by transaction between the private respondents and the original land owners, there is no breach of the Fragmentation Act and therefore, it is requested to allow the present special civil application.

4. It is required to be noted that so far as the petitioners are concerned, they are the heirs of the original land owners who have sold the lands in question to the private respondents herein and therefore, it is not open for the petitioners to challenge and contend that the sale transaction was hit by the provisions of the Fragmentation Act. It is also required to be noted that it is the State Government which has initiated the proceedings suo motu. Considering the fact that the sale transaction has taken place in the year 1989 and that the proceedings came to be initiated by the Deputy Collector, Choryashi Prant, Surat after a period of 13 years that means after unreasonable period which was not permissible, the Secretary (Appeals), Revenue Department, State of Gujarat allowed the revision application and quashed and set aside the order passed by the Deputy Collector, Choryashi Prant, Surat, it cannot be said that there is any illegality committed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat. In view of the aforesaid facts and circumstances and in view of the fact that the powers were exercised by the Deputy

Collector after a period of 13 years i.e. after unreasonable period, the order has rightly been set aside by the Principal Secretary (Appeals), Revenue Department.

5. Under the circumstances, there is no substance in the present special civil application and the same is required to be dismissed and is accordingly dismissed.

However, there is no order as to costs.

[M.R.Shah, J.]

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